

The violation of the Adversarial Principle in the Victim's Statement in the Gesell Chamber: A Study in the Judicial District of Ayacucho, 2025

The violation of the adversarial principle in the victim's statement in the Gesell Chamber: A study in the judicial district of Ayacucho, 2025

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Abstract: The objective of this research was to determine how the victim's statement in the Gesell Chamber violates the principle of contradiction in the criminal proceedings processed in the judicial district of Ayacucho during the year 2025. A qualitative approach was adopted, of a basic type, descriptive-explanatory level and non-experimental-cross-sectional design. The sample was made up of 13 legal operators (3 preparatory investigation judges, 3 provincial criminal prosecutors, 5 criminal trial lawyers and 2 psychologists facilitating the Gesell Chamber), as well as 7 transcription records of a single interview in the Gesell Chamber. Semi-structured interviews and documentary analysis were used as data collection techniques. The results showed that, in all the cases analyzed, the format of the proceeding was exclusively unidirectional: the psychologist asked questions and the victim answered without any intervention from the defendant's technical defense. There was no question by the defense attorney, no objections, no cross-examination, and no real-time control of the evidence. This absence of effective contradiction was verified even in those cases where the record recorded the formal presence of the defendant's defense counsel and in the proceedings classified as advance evidence with judicial conduct. It is concluded that the victim's statement in the Gesell Chamber violates the principle of adversarial proceedings in its three essential dimensions – cross-examination, equality of arms and control of evidence – configuring a structural, systematic and persistent affectation that compromises the constitutional validity of the evidence obtained and the legitimacy of the criminal process in the judicial district of Ayacucho. This research aimed to determine how the victim's statement in the Gesell Chamber violates the principle of contradiction in the criminal proceedings processed in the judicial district of Ayacucho during the year 2025. The study was developed under a qualitative approach, basic type, descriptive-explanatory level and non-experimental-cross-sectional design. The sample consisted of 13 legal operators (3 preparatory investigation judges, 3 provincial criminal prosecutors, 5 criminal litigation lawyers, and 2 psychologist facilitators of the Gesell Room), as well as 7 transcripts of individual interview records in the Gesell Room. Semi-structured interviews and documentary analysis were used as data collection techniques. The results showed that, in all the cases analyzed, the format of the procedure was exclusively unidirectional: the psychologist asked questions and the victim answered without the intervention of the defendant's technical defense. The defense attorney did not ask questions, or objections, or cross-examination, or real-time control of the evidence. This absence of effective contradiction was verified even in those cases in which the file recorded the formal presence of the defendant's defense attorney and in the proceedings classified as anticipated evidence with judicial conduct. It was concluded that the victim's statement in the Gesell Chamber violates the adversarial principle in its three essential dimensions – cross-examination, equality of arms and control of evidence – constituting a structural, systematic and persistent violation that compromises the constitutional validity of the evidence obtained and the legitimacy of the criminal process in the judicial district of Ayacucho.

Keywords: Adversarial principle, Gesell Chamber, cross-examination, equality of arms, anticipated evidence, due process



1. Introduction

The adversarial principle is one of the fundamental guarantees of criminal proceedings in a Constitutional State governed by the rule of law. Recognized in Article 139, No. 14, of the Political Constitution of Peru, in Article IX of the Preliminary Title of the Code of Criminal Procedure and in Article 8 of the American Convention on Human Rights, this principle guarantees the accused the right to know, control and refute the means of evidence against him, as well as to cross-examine witnesses and victims who testify in the process (Neyra Flores, 2015; Cubas Villanueva, 2009).

However, in the context of crimes against sexual freedom committed to the detriment of minors, the victim's statement is received through the unique interview technique in the Gesell Chamber, an environment specially designed to avoid revictimization, but which in the legal practice of the judicial district of Ayacucho, during the year 2025, has generated an unresolved tension between the protection of the victim and the procedural guarantees of the accused (Gutiérrez, 2011; Escobar, 2020).

The Gesell Chamber was conceived by the pediatrician and psychologist Arnold Gesell (1880-1961) as a space made up of two rooms separated by a unidirectional glass, which allows the observation and listening to the interaction without the observed subject being aware of the presence of the observers. Its forensic use was developed from the work of psychologist Gail Goodman in the eighties of the twentieth century, in response to the need to obtain statements from child victims of sexual abuse while minimizing the additional trauma of the criminal process (Gutiérrez, 2011).

In Peru, the Single Interview Protocol in the Gesell Chamber was approved by Administrative Resolution No. 277-2019-CE-PJ, which provides that the interview is conducted by a professional in psychology (forensic), while the other procedural subjects participate from an observation room, channeling their interventions through the interviewer (forensic psychologist). This regulation seeks to safeguard the emotional integrity of the victim, but its application has raised questions regarding the effectiveness of the exercise of the adversarial procedure, insofar as the defense does not intervene directly in the cross-examination (Administrative Resolution No. 277-2019-CE-PJ, 2019).

The central problem identified lies in the fact that the mechanism of transferring questions through the interviewing psychologist does not guarantee by itself the effective exercise of the adversarial principle. In judicial practice, it has been verified that:

- (i) The questions posed by the defense are not always fully transferred;
- (ii) The psychologist can reformulate or discard questions under technical criteria that are not always transparent to the parties;
- (iii) The arrested defendant, in many cases, does not have the possibility of communicating with his lawyer in real time during the proceedings; y
- (iv) Audiovisual recording, although available for later stages, does not replace the possibility of contradicting the evidence at the time of its production.

If the current state of affairs continues, the violation of the principle of contradiction in the interviews in the Gesell Chamber will continue to consolidate itself as a normalized judicial practice, with serious consequences for the constitutional validity of the evidence obtained and for the legitimacy of the accusatory and guarantee criminal process.

The statement of the alleged victim in Gesell's chamber is one that is made at a time prior to the oral trial; This figure is intended to prevent the information contained in that source of evidence from being altered or disappearing in the near future, so the Preparatory Investigation Judge must be accredited the urgency and the need for his action in advance.

Article 242 of the Peruvian Code of Criminal Procedure establishes the following in paragraph (d) of the preliminary evidence:

(d) Statement by children and adolescents as aggrieved parties for offences covered by articles (...) Chapter IX: Violation of sexual freedom, Chapter X: Pimping and Chapter XI: Offenses to public modesty, (...), of the Penal Code.

However, the problem generated by the statement in the Gesell Chamber is that, as it is anticipated evidence, by not respecting the same conditions in respect of the principle of contradiction as it would be an oral trial hearing, so that the technical defense is limited in carrying out the cross-examination, and with the certainty that in the future oral trial we will attend as mere spectators without any possibility of contradicting.

Previous research background evidences this problem. Cerna (2019) concluded that the application of the Gesell Chamber in the framework of criminal proceedings directly collides with the adversarial principle. Mendoza (2021) determined that the limitation of the adversarial principle in the stage of production of anticipated evidence hinders the exercise of an effective defense. Burga (2019) pointed out that the practice of the Gesell Chamber places the accused at a significant evidentiary disadvantage that affects the principle of equality of arms. At the international level, Reyes (2020) compared the Spanish and Colombian models, concluding that the former offers greater guarantees for the accused. Villarroel (2018) proposed that States should implement technological mechanisms that allow the accused and his defense to follow the proceedings in real time from a separate courtroom.

The general objective of this research was to determine how the victim's statement in the Gesell Chamber violates the principle of contradiction in the criminal proceedings processed in the judicial district of Ayacucho during the year 2025. The specific objectives were:

- (i) To analyze the violation in its dimension of the right to cross-examination of the accused;
- (ii) To examine the violation in its dimension of equality of arms between the parties; y
- (iii) To determine the violation in its dimension of control of the evidence by the technical defense.

2. Methodology

II.1. Focus, Type and Level of Research

The study was developed under a qualitative approach, of a basic type, descriptive-explanatory level and non-experimental-cross-sectional design. The qualitative approach made it possible to understand the phenomenon from the perspective of the participants in their natural environment, exploring their perceptions, experiences, and criticisms of the operation of the principle of contradiction in the Gesell Chamber (Hernández & Mendoza, 2020). The non-experimental-cross-sectional design was justified because the variables were not manipulated; The phenomenon was observed as it occurs in the judicial reality, focusing on a specific period of time (year 2025) and coming into contact with the sampling unit only once.

II.2. Research Methods

Three complementary methods were used:

- (i) the dogmatic-legal method, for the exhaustive study of the written norm, doctrine and jurisprudence;
- (ii) the hermeneutical-legal method, to interpret the meaning of the rules on the protection of victims and seek the balance between revictimization and the right of defense; y
- (iii) the legal-comparative method, to contrast the Peruvian protocol with international standards and models of other countries.

II.3. Population and Sample

The population was made up of operators of the criminal justice system of the judicial district of Ayacucho who intervene in the reception and evaluation of the victim's statement in the Gesell Chamber. The sample, of a non-probabilistic type for convenience, included: 3 preparatory investigation judges, 3 provincial criminal prosecutors, 5 trial lawyers in criminal matters, 2 psychologists facilitating the Gesell Chamber, and the analysis of 7 transcripts of a single interview in the Gesell Chamber.

II.4. Data Collection Techniques and Instruments

The following data collection techniques were used:

- (i) The semi-structured interview, applied to the justice operators of the province of Huamanga to explore their perceptions, experiences and criticisms about the operation of the principle of contradiction in the Gesell Chamber; y
- (ii) The documentary analysis, to systematically examine the tax folders, hearing minutes and transcription minutes in the Gesell Chamber during the year 2025.

The instruments used were:

- (i) The semi-structured interview guide, consisting of a bank of open questions designed to extract detailed information on the role of the psychologist, technological limitations and judicial assessment criteria; y
- (ii) The documentary analysis sheet (collection matrix), which made it possible to record objective data on the fiscal requirements for advance evidence and transcription minutes: number of questions from the defense rejected, arguments for nullity raised and type of filter applied by the facilitating psychologist.

II.5. Data Processing and Analysis

Data processing was carried out by:

- (i) Categorization, grouping the answers of the interviews according to the established subcategories (psychological filter, technical failures, judge's assessment);
- (ii) Triangulation, contrasting what the law says (theoretical bases), what the interviewees say (subjective reality) and what the files say (objective reality); y
- (iii) Legal interpretation, drawing conclusions on whether or not there is a systematic violation of the adversarial principle in Ayacucho.

II.6. Ethical Aspects

The research was governed by the ethical principles of confidentiality and anonymity, informed consent, scientific integrity (anti-plagiarism), non-maleficence and veracity. Given that judicial processes involving vulnerable victims or minors were analyzed, the absolute anonymity of the parties was guaranteed. All the interviewed specialists participated voluntarily, after signing an informed consent document.

3. Results

3.1. Violation of the Adversarial Principle in its Dimension of the Right to Cross-Examination

The results showed an absolute consensus (13 out of 13 interviewees) that the defense attorney does not have the power to ask questions directly to the victim during the Gesell Chamber proceeding. This result evidences a structural restriction that affects the core of the adversarial principle in its cross-examination dimension.

Regarding the request for cross-examinations, three different positions were identified. The judges of the preliminary investigation recognized the theoretical possibility that the defense may request written cross-

examinations from the prosecutor, but warned that this power lacks a standardized procedure, a defined deadline for resolving and a mandatory registration of rejected requests. The JIP-03 described this situation as a "serious vacuum", which suggests a regulatory deficiency that affects predictability and legal certainty.

Provincial criminal prosecutors admitted to receiving requests for cross-examination, but revealed a high rejection rate. FPP-02 pointed out that 80% of these requests are denied under the criteria of "suggestiveness" or "state of vulnerability" of the victim. FPP-03 added a critical element: there is no appeal against the prosecutor's refusal at that procedural stage, which makes the prosecutor's decision immediately unchallengeable.

Criminal trial lawyers reported a systematic experience of rejection ranging from 95% (ALP-03) to 100% (ALP-01) of their cross-examination requests. Their testimonies revealed three structural problems:

- (i) The reformulation of the accepted re-questioning that distorts its original meaning (ALP-02);
- (ii) The absence of a record or record of the orders placed (ALP-02); y
- (iii) The explicit exclusion of the defense attorney from the interrogation process, as evidenced by the phrase attributed to a prosecutor: "You are not here to ask, only to observe" (ALP-04).

The facilitating psychologists confirmed from their technical position the subordination of the defender: they do not interact directly with him, receive instructions exclusively from the prosecutor and lack autonomy to accept cross-examinations without prosecutorial authorization. The PSI-02 admitted that, if he accepts a cross-examination without permission from the prosecutor, "they call his attention," which shows a chain of vertical control that excludes the defense.

In summary, although there is a formal recognition of the possibility of requesting cross-examinations, in the practice of the judicial district of Ayacucho during the year 2025 such power is illusory due to:

- (i) Unchecked fiscal discretion;
- (ii) The absence of registration of rejected orders;
- (iii) The absence of an appeal against the refusal; y
- (iv) The high rejection rate reported unanimously by defense attorneys.

3.2. Violation of the Adversarial Principle in its Dimension of Equality of Arms

The investigation revealed a majority consensus (9 out of 13 interviewees) about the lack of equal conditions between the Public Prosecutor's Office and the technical defense during the Gesell Chamber proceeding.

The three judges interviewed unanimously agreed in denying the existence of equal conditions. The JIP-01 described the situation as a "structural asymmetry", a term that suggests that the inequality is not circumstantial or correctable through good practices, but is rooted in the very design of the diligence. JIP-02 introduced a crucial analytical distinction between theory and practice: "In theory there should be equality because it is advance evidence, but in practice there is not." He attributed this inequality to the fact that "the prosecutor is the owner of the investigation," an expression that reflects the residual inquisitorial conception of the Peruvian criminal process.

Prosecutors presented a sharply divided position. FPP-01 maintained that equality does exist because "the defense can request re-questioning in writing," and attributed the perception of inequality to a poor exercise of rights by the defense. FPP-02 evaded the binary qualification of equality or inequality and proposed a functional distinction: "They are different roles. The prosecutor has the obligation to seek the material truth, the defense has the obligation to protect the accused." FPP-03 adopted an intermediate and self-reflexive position: "I recognize that in fact there is no equality. The defense passively observes, I decide." However, he justified this inequality in the "need to protect the victim".

The five defense attorneys were unanimous and categorical in denying the existence of equal conditions. ALP-01 described a "total power relationship" and warned of an extreme consequence: "If we protest, we are removed from the room." The ALP-02 revealed an information asymmetry prior to the proceeding: "The prosecutor prepares the script of questions with the psychologist before the proceeding. We don't see that script." The ALP-03 quantified their experience: "if we are lucky, we are accepted a re-question every 10 attempts", suggesting a success rate of 10% at best. The ALP-04 offered a particularly eloquent image: "The prosecutor is inside the courtroom with the victim, the defender is outside, behind a mirror. There is no direct communication. The prosecutor speaks and we remain silent. That is not equality, it is a monologue with a witness." The ALP-05 concluded with a critical high-voltage statement: "The adversarial principle and equality of arms are a dead letter in the Gesell Chamber."

3.3. Violation of the Adversarial Principle in its Dimension of Control of Evidence

The results showed an overwhelming consensus (10 out of 13 interviewees) that the technical defense cannot effectively control the relevance, legality and conduct of the questions asked to the victim during the Gesell Chamber.

The three judges interviewed unanimously agreed in denying the existence of effective control. JIP-01 made a crucial temporal distinction: "You can't control them in real time." He pointed out that, before the proceeding, the defense "can review the script of questions if the prosecutor provides it, but that does not always happen." During the interview, "there is no control." Later, he can challenge the evidence for nullity in the intermediate stage, but "that is no longer control during production, but subsequent control." The JIP-02 elaborated on this idea: the request for the exclusion of illegitimate questions "does not stop the proceedings," "the prosecutor decides and the question is formulated in the same way," and concluded that "control is illusory." The JIP-03 was even more blunt: "There is no effective control. The defense cannot cross out a question before it is asked." He pointed out that the defense "can only protest, but its protest does not have suspensive effect," and concluded that "that is not control, it is a claim without effect."

The prosecutors presented a position that, although it affirmed the existence of control in formal terms, revealed its substantive limitations. The FPP-01 maintained that "it can control, through the request for observation prior to the beginning of the proceeding," but recognized that "control exists, but it is indirect." FPP-02 was more explicit: "I exercise control as chief prosecutor. The defense can suggest, but the final decision is mine." FPP-03 was the most honest from a fiscal perspective: "It cannot control in the sense of preventing a question from being asked. The defense may object, but the question has already been asked or is about to be asked." He acknowledged that "the real control over relevance, legality and conduct corresponds to the prosecutor", and that the defence "only has a weak, subsequent or merely consultative control".

The five defense attorneys were unanimous and categorical in affirming the lack of control. The ALP-01 was blunt: "It can't control anything. The prosecutor asks the questions he wants. I can write 'this question is impertinent', but the prosecutor asks it anyway." He concluded that "control is zero." ALP-02 recounted an attempt to challenge a leading question before it was asked, to which the prosecutor replied, "The question is already approved in the script, I am not going to change it for you." ALP-03 noted that "the defense has no tool to prevent an illegal, impertinent, or inconsequential question." ALP-04 made a critical analogy: "It is as if the judge allowed one of the parties to decide what evidence goes in and what doesn't. That is not a fair process." The ALP-05 added an element about the insufficiency of the subsequent control: "The subsequent control in the intermediate stage is insufficient because the statement is already in the process and the judge has already read it. The damage has been done."

3.4. Documentary Analysis of the Minutes of the Gesell Chamber

The analysis of the 7 transcription minutes of Cámara Gesell confirmed the findings of the interviews. In all the cases analyzed, the format of the proceeding was exclusively unidirectional: the psychologist asked questions and the victim answered without any intervention from the defendant's technical defense.

Case 1 (C.F. No. 1987-2023): Interview of a minor under 14 years of age. There is no intervention by the defense attorney, no questions aimed at disputing the extremes of the story, no requests for clarification or precision.

Case 2 (C.F. No. 1384-2023): Interview of a minor in case of anal rape. There are no questions asked by defence counsel, no requests for clarification, and no objections to suggestive or inappropriate questions.

Case 3 (C.F. No. 1163-2022): Even when the presence of a public defender of the investigated person connected remotely through Google Meet was formally registered, there was no evidence of any active participation of said defender during the proceeding. He did not ask questions, he did not object, he did not cross-examine.

Case 4 (C.F. No. 1589-2023): Advance evidence conducted by Dr. Lily Karen Choqueachua Ruiz de Urbina. Despite the presence of Dr. Alfonso Llamocca Rodríguez, public defender of the investigated, there is no active intervention by the defender. He did not ask questions to the minor, he does not object to the psychologist's questions, he does not request clarifications, he does not contest the admissibility or relevance of the questions.

Case 5 (C.F. No. 1673-2023): Advance evidence conducted by Dr. Xavier Mochcco Flores. The minutes record the presence of Abog. Víctor Cabrera Huamani, public defender of the accused, but there is no evidence of active participation. The violation continues despite the change of all the intervening operators, which shows that the problem is not attributable to specific people, but to the structural design and institutional culture of the Gesell Chamber in the judicial district of Ayacucho.

Case 6 (C.F. No. 164-2022): Despite the fact that the minor was 12 years old – an age at which single interview protocols are usually more rigorous – the format of the proceeding remained unidirectional, without the active participation of the defendant's lawyer.

Case 7 (C.F. No. 1404-2022): Despite the fact that the proceeding met all the normative conditions to guarantee the adversarial principle – conduct by a specialized family judge, presence of a prosecutor, formal presence of the defendant's public defender, presence of the victim's defense attorney – there was no evidence of any active participation by the defendant's defense attorney.

4. Discussion

4.1. Violation of the Adversarial Principle in its Dimension of the Right to Cross-Examination

The empirical findings of the present research demonstrate that, in the judicial district of Ayacucho during the year 2025, the right to cross-examination of the accused on the victim's statement in the Gesell Chamber is structurally unfeasible. Interviews with legal operators revealed that the defence counsel does not have the power to ask questions directly to the victim, and that the request for cross-examination in writing to the prosecutor in charge of the proceedings is systematically rejected – with rejection rates estimated by the prosecutors themselves at up to 80% and defence lawyers reporting between 95% and 100% – without there being an effective remedy against such refusal.

This finding coincides with what was pointed out by Cerna (2019), who concluded that the application of the Gesell Chamber collides directly with the adversarial principle by restricting the active participation of the defense. Likewise, the thesis of Reyes (2020) is confirmed, who argued that cross-examination should be exercised in the same diligence through cross-examinations channeled through the interviewing psychologist, but with guarantees of full transfer and without discretionary filters.

However, the judicial practice of Ayacucho moves away from the Spanish model contained in Article 448 of the Law of Criminal Procedure, where the defense lawyer has the effective possibility of formulating questions through the psychologist without direct contact with the victim. The Spanish Supreme Court, in Judgment No. 1100/2021, specified that the presence of the defence counsel in the observation room and the effective possibility of asking questions are indispensable conditions for the constitutional validity of the evidence obtained in the Gesell Chamber.

From the theoretical perspective of Alexy (1993), the total restriction of cross-examination in the diligence does not exceed the sub-principle of necessity of the proportionality test. Less restrictive alternative measures — such as real-time transmission from a separate courtroom, written questions with the obligation to be fully transferred, and

recording with the possibility of simultaneous judicial observation — would preserve the core of cross-examination without compromising the protection of the victim.

Ferrajoli's (1995) theory of guarantees is particularly illuminating: the author argues that the adversarial principle is the fundamental epistemological guarantee of the accusatory criminal process, and that a process that dispenses with it in the performance of its main means of evidence incurs what he calls "criminal law of the enemy". The judicial practice of Ayacucho, by neutralizing cross-examination, treats the accused not as a subject of rights but as an object of state persecution, which contradicts the accusatory model adopted by the Code of Criminal Procedure.

The documentary analysis of the seven minutes of the Gesell Chamber confirms this finding: in none of the cases was there any active intervention by the technical defense. Even in those cases where the record formally recorded the presence of the defendant's defense attorney — either in person or virtually — there was no evidence of the formulation of questions, objections, or cross-examination. This uniformity of the result despite the diversity of operators (five different psychologists, four different judges, different prosecutors and defenders) shows that the violation is structural and not attributable to individual malpractice.

The Inter-American Court of Human Rights, in the case of *Castillo Petruzzi et al. v. Peru* (1999), specified that the role of the defence counsel necessarily includes the right to cross-examine and cross-examine witnesses. Ayacucho's judicial practice openly contravenes this conventional standard, which could generate international responsibility of the Peruvian State.

4.2. Violation of the Adversarial Principle in its Dimension of Equality of Arms

The results of the research show a deep fracture between the normative discourse and the procedural practice regarding equality of arms during the proceedings of Cámara Gesell. Nine of thirteen interviewees agreed in denying the existence of equal conditions between the Public Prosecutor's Office and the technical defense. The judges described the situation as a "structural asymmetry", pointing out that the prosecutor fully controls the proceedings: he formulates the questions, decides which cross-examinations of the defense are accepted, and determines how the record is recorded.

This finding confirms what Burga (2019) warned, who pointed out that the practice of the Gesell Chamber places the accused at a significant evidentiary disadvantage that affects the principle of equality of arms, configuring a form of structural procedural imbalance. From the perspective of the Peruvian Constitutional Court (File No. 06135-2006-PA/TC), equality of arms implies that the parties have the same powers to defend themselves, the same opportunities to offer evidence and the same possibilities to exercise the right of contradiction.

The judicial practice of Ayacucho violates this constitutional standard because, while the Public Prosecutor's Office actively participates in the production of evidence from the observation room and through the interviewing psychologist, the technical defense is limited to passively observing through a one-way glass, without effective mechanisms to influence the content, order or form of the questions. As García Toma (2013) points out, equality of arms requires that the State provide equal and optimal conditions to the participants in the process, which is not the case in the judicial practice of Ayacucho.

The documentary analysis of the seven minutes of the Gesell Chamber reveals an additional element that aggravates this inequality: in all cases, the format of the interview was exclusively unidirectional, without any intervention by the defense. Even in cases classified as advance evidence (cases 4 and 5), where Article 242 of the Code of Criminal Procedure expressly requires the observance of the adversarial principle, equality of arms was also absent.

The comparison with the Chilean model, developed in the framework of the 2000 criminal procedure reform, is particularly revealing. Figueroa and Salinas (2019) point out that the Chilean model has achieved a satisfactory balance between the protection of the victim and the adversarial principle, guaranteeing the presence of the defense attorney in the observation room and the possibility of communicating with the detained defendant through

technological means. The judicial district of Ayacucho is well below this comparative standard, which shows that the adoption of regulatory and protocol reforms is technically feasible and legally necessary.

4.3. Violation of the Adversarial Principle in its Dimension of Control of Evidence

The findings of the investigation show that the technical defense cannot effectively control the relevance, legality and conduct of the questions that are asked to the victim during the Gesell Chamber. Ten out of thirteen interviewees agreed in denying the existence of effective real-time control. The judges pointed out that the defense cannot cross out a question before it is formulated, that its protest does not have suspensive effect, and that the only possible control is subsequent (intermediate stage or challenge of sentence), but that this late control does not repair the contradictory deficit originated in the production of evidence.

The prosecutors, although they formally affirmed the existence of control through requests for prior observation, recognized that the final decision is the prosecutor's and that the defense "only has a weak, subsequent or merely advisory control." This finding confirms what Mendoza (2021) pointed out, who determined that the limitation of the adversarial principle in the production of anticipated evidence hinders the exercise of an effective defense during the preparatory investigation.

The documentary analysis of the seven minutes of the Gesell Chamber is conclusive: in none of the cases was there any attempt at evidentiary control by the defense. Moreover, the interviews revealed that, even when the defense attempts to object or request cross-examination, such attempts are not recorded in the record because the standard format does not include an incident section and because prosecutors are under no legal obligation to record rejected requests. As one defense attorney noted, "Without registration, I cannot prove that I attempted to exercise my right. It is a procedural trap."

This finding is particularly serious because it makes the right to control of the evidence an undemonstrable right before the judge who will then evaluate the evidence and before the court of appeal. From the perspective of Article 8(2)(f) of the ACHR, the right of the accused to question or have examined the witnesses for the prosecution presupposes the possibility of controlling the relevance, legality and conduct of the questions.

The Inter-American Court of Human Rights, in the case of Barreto Leiva v. Venezuela (2009), pointed out that the defense has the right to know the charges in a timely manner and to have sufficient time and means to prepare its defense, conditions that are essential for the process to be fair. The judicial practice of Ayacucho, by depriving the defense of any effective control over the questions asked of the victim, violates this conventional standard.

Ferrajoli's (1995) theory of guarantees is again relevant: the author argues that the principle of contradiction is the guarantee that allows the purification of witness evidence through the revelation of contradictions, inconsistencies and biases. The suppression of this control not only affects the guarantees of the accused but also the epistemological quality of the evidence obtained, since a statement that has not been subjected to the scrutiny of cross-examination has less probative value than one that has passed that control.

4.4. Integration of Findings: Structural Violation of the Adversarial Principle

The findings of the investigation, integrated from the three specific objectives, allow us to conclude that the victim's statement in the Gesell Chamber violates the principle of contradiction in its three essential dimensions – cross-examination, equality of arms and control of evidence – in the criminal proceedings processed in the judicial district of Ayacucho during the year 2025. This violation is structural, systematic and persistent, as evidenced by:

- (i) The unanimity of the defense lawyers in reporting the impossibility of exercising cross-examination;
- (ii) The recognition by the prosecutors themselves that 80% of the requests for cross-examination are rejected and that there is no specific procedural moment for cross-examination;
- (iii) The confirmation by judges that equality of arms is non-existent in practice;

- (iv) The finding that the defence has no effective control over the questions asked; y
- (v) The documentary analysis of seven minutes of the Gesell Chamber in which no active intervention of the defense was recorded, even in cases where the minutes formally recorded the presence of the defendant's defense counsel or where the proceeding was qualified as anticipated evidence with judicial conduct.

These findings confirm the warnings of national and international doctrine. Cerna (2019) pointed out that the Gesell Chamber generates a counterposition to the right of cross-examination. Villarroel (2018) concluded that its application generates an objective collision between the principle of evidentiary immediacy and the principle of contradiction. Figueroa and Salinas (2019) argued that the total exclusion of the defense attorney from the possibility of asking questions constitutes a disproportionate restriction that does not pass the proportionality test.

From the perspective of Alexy's (1993) theory of fundamental rights, the restriction of the adversarial principle imposed by the Single Interview Protocol (Administrative Resolution No. 277-2019-CE-PJ) does not pass the proportionality test. Although the restriction is suitable for protecting the victim from revictimization (first sub-principle), it does not exceed the sub-principle of necessity, since there are alternative measures that are less restrictive of the adversarial principle that achieve the same level of protection for the victim. The Spanish model (Article 448 of the Criminal Procedure Law) and the Chilean model demonstrate that it is possible to guarantee contradiction without sacrificing the protection of the victim.

Nor does it exceed the sub-principle of proportionality in the strict sense, since the benefit obtained for the victim – avoiding direct contact with the accused – does not justify the sacrifice imposed on the adversarial principle, which is a fundamental right of the accused recognized in Article 139, No. 14) of the Political Constitution of Peru and in Article 8 of the ACHR.

Article IX of the Preliminary Title of the Code of Criminal Procedure recognizes the principle of adversarial proceedings as a guarantee of the first order. Article 242, which regulates advance evidence, requires that it be carried out with the same guarantees that govern the presentation of evidence in the oral trial. However, the judicial practice of Ayacucho shows that these normative provisions are not complied with in reality.

The formal presence of judges and defense attorneys in the proceedings – even in the anticipated evidence – does not translate into an effective contradiction. Audiovisual recording, although useful, does not replace the possibility of contradicting the evidence at the time of its production. As Tamarit Sumalla (2013) points out, the protection of the victim cannot be used as an argument to justify the total suppression of the adversarial principle. The tension between the two values must be resolved by means of the proportionality test, not by unilaterally suppressing the principle of contradiction.

Finally, this research confirms Yip's (2019) warning: non-compliance with the action protocols generates a double violation – it does not adequately protect the victim or guarantee the adversarial principle – which compromises the evidentiary effectiveness of the act and the validity of the process. The violation of the adversarial principle in the proceedings of the Gesell Chamber in Ayacucho not only affects the guarantees of the accused, but also the legitimacy of the criminal process as a whole and the evidentiary effectiveness of the proceeding itself, which can be questioned in the oral trial and in the instances of challenge.

5. Conclusions

1.- In the judicial district of Ayacucho during the year 2025, it was evident that the victim's statement in the Gesell Chamber violates the principle of contradiction in its three essential dimensions – cross-examination, equality of arms and control of evidence – configuring a structural, systematic and persistent affectation. This violation was verified both in the interviews with legal operators and in the documentary analysis of seven minutes of the Gesell Chamber, where in no case was there active intervention of the technical defense of the accused.

2.- The right to cross-examination of the accused was structurally unfeasible in the judicial practice of Ayacucho. The defense attorney does not have the power to ask questions directly to the victim, and the request for written cross-examination to the prosecutor is systematically rejected—with rejection rates that defense attorneys report between 95% and 100%—without there being an effective remedy against such denial, in violation of Article 139.14 of the Political Constitution of Peru and Article 8.2.f of the American Convention on Human Rights.

3.- The diligence of the Gesell Chamber in Ayacucho is taking place in conditions of structural asymmetry that affect the equality of arms. While the prosecutor fully controls the proceedings – he formulates the questions, decides which cross-examinations by the defence are accepted and determines how the record is recorded – the technical defence is limited to passively observing through a one-way glass, without effective mechanisms to influence the content, order or form of the questions, in violation of the principle of procedural equality recognised by the Constitutional Court.

4.- The technical defense cannot effectively control the relevance, legality and conduct of the questions asked to the victim during the Gesell Chamber. Control is non-existent in real time, since the defense cannot cross out a question before it is formulated, its protest does not have suspensive effect, and the final decision falls unilaterally on the prosecutor. The subsequent control is insufficient to repair the contradictory deficit, since the statement has already been incorporated into the process and assessed by the judge.

5.- The restriction of the adversarial principle imposed by the Single Interview Protocol (Administrative Resolution No. 277-2019-CE-PJ) does not pass the proportionality test developed by Robert Alexy. Although it is suitable for protecting the victim from revictimization, it does not overcome the sub-principle of necessity, since there are less restrictive alternative measures – such as the Spanish and Chilean models – that achieve the same level of protection without sacrificing a fundamental right of the accused recognized in the Constitution and in international human rights instruments.

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